of section 329 (2) of the National Land Code, 1965. On this ground alone the balance of convenience is in favour of the defendants and the injunction must therefore be discharged.

There is another ground why the injunction should be discharged, i.e. in the affidavit in support of the *ex parte* application for injunction, it was not disclosed that the private caveats entered by the plaintiffs in respect of the 100 lots of land had earlier on been removed by order of Ajaib Singh J. There is nothing in his notes of hearing to show that counsel had brought this material fact to his attention. Had this fact been brought to his attention, the learned judge would not have granted the injunction, for to do so would be to defeat his own order for the removal of the private caveats. The law is clear that in applying for an *ex parte* injunction, the applicant is duty bound to disclose in his affidavit all material facts fully and frankly. (see *Sari Artists Film Productions Sdn. Bhd.* v. *Malaysia Film Industries Sdn. Bhd.*[3] *Negocios Del Mar S.A.* v. *Doric Shipping Corporation S.A.*[4] and *Third Chandris Shipping Corporation* v. *Unimarine S.A.*[5])

It is not necessary for me to deal with other grounds. I must make it clear that in deciding this application, I have not in any way dealt with the merits of the suit which is fixed for hearing soon.

For the above reasons, I would allow this application with costs.

Application allowed.

Solicitors: *Shook Lin & Bok; Datin Saraswathy Devi.*

GANESAN v. PUBLIC PROSECUTOR

[O. Cr. J. (Mohamed Dzaiddin J.) April 27, 1983]
[Kuala Lumpur – Criminal Application No. 7 of 1983]

Criminal Law & Procedure – Bail – Charge of corruption – 3 years' imprisonment sentence – Refusal to grant bail by lower court – Factors to consider in cases where a term of imprisonment has been imposed – Prevention of Corruption Act 1961, s. 4(a) – Criminal Procedure Code, s. 311

Bail – Refusal to grant bail by lower court – Factors to consider in cases where a term of imprisonment has been imposed.

The applicant in this case was charged for an offence under section 4(a) of the Prevention of Corruption Act 1961. At the conclusion of the case he was convicted and sentenced to 3 years' imprisonment by the learned President, Sessions Court. The applicant's counsel applied under s. 311 of the Criminal Procedure Code for a stay of execution pending appeal and that bail be granted until the outcome of the hearing of the appeal. The prosecution objected and the learned President accordingly disallowed the application. The applicant sought by Notice of Motion for stay of execution of the sentence pending hearing of the appeal.

Held: a matter like this particular case ought not to have come before this court but such application could have been granted by the court of first instance. The application for a stay of execution would be granted and the applicant should be released on bail in the sum of $3,000 with 2 sureties.

Case referred to:

(1) *Set Kon Kim* v. *Public Prosecutor* F.T.C. Appn No. 3 of 1983 (to be reported).

CRIMINAL APPLICATION.

Gurbakhash Singh for the applicant.

Phang Ah Hee (Deputy Public Prosecutor) for the respondent.

Mohamed Dzaiddin J. (delivering oral judgment): This is yet another application by way of Notice of Motion to this court for stay of execution of the sentence pending hearing of the appeal. The applicant was charged for an offence under section 4(a) of the Prevention of Corruption Act 1961, and at the conclusion of the case, the learned President, Sessions Court, Kuala Lumpur, convicted and sentenced him to three years' imprisonment. The applicant's counsel then applied under section 311 of the Criminal Procedure Code for a stay of execution pending appeal and that bail be granted until the outcome of the hearing of the appeal. The prosecution objected and the learned President accordingly disallowed the application.

I do not know the reason why the learned President has refused this application. The only conceivable reason I could think of was that she has imposed a prison sentence against the applicant. It is well settled that the granting of bail by the lower Court is a matter of discretion of the Magistrate or President concerned. However, it has been stated on numerous occasions that the consideration which should guide the subordinate courts in granting or refusing bail pending appeal in cases where a term of imprisonment has been imposed are as follows:–

(1) gravity or otherwise of the offence;

(2) the length of the term of imprisonment in comparison with the length of time which is

likely to take for the appeal to be heard;

(3) whether there are difficult points of law involved;

(4) whether the accused is a first offender or has previous conviction;

(5) whether the accused would become involved again in another offence whilst at liberty; and

(6) whether the security imposed will ensure the attendance of the appellant before the appellate court.

See: *Set Kon Kim* v. *Public Prosecutor*[1] (F.T.C. Appn. 3/1983) (unreported).

In *Mallal's* Criminal Procedure, 4th Edition, page 461, it is stated as follows:

"Bail should not be refused on the ground that the accused have been sentenced to a long term of imprisonment or that the granting of bail has a tendency to increase the number of appeals and of protracting the appellate proceedings. The discretion vested in the Court to grant bail should be judiciously exercised in accordance with the principles laid down by the Statutes on the facts of each particular case."

It is hoped the above principle would serve as guidance to Magistrates and Presidents in the subordinate courts when exercising their discretions in a matter like this particular case which, I feel, ought not to have come before this court but such application could have been granted by the court of first instance.

In the above circumstances, I grant this application for a stay of execution. The applicant is released on bail in the sum of $3,000/- with two sureties.

Application allowed.

Solicitors: *Gurbakhash & Tan.*

ABDUL RAHIM BIN HAJI BAHAUDIN v. CHIEF KADI, KEDAH

[O.C.J. (Mustapha Hussain J.) May 20, 1983]
[Alor Star – Originating Motion No. 7 of 1983]

Administrative Law – Prohibition – Accused a non-Muslim charged in Syariah Court – Accused not subject to jurisdiction of Syariah Court – Kedah Administration of Muslim Law Enactment, 1962, s. 4(3).

Islamic Law – Jurisdiction of Syariah Court – No jurisdiction over non-Muslims – Kedah Administration of Muslim Law Enactment, 1962, s.4(3)

In this case the applicant had been charged in the Syariah Court in Kedah on charges of distributing religious pamphlets and documents relating to the Ahmadhi sect. The applicant claimed to have embraced the Ahmadhi sect. He applied for a writ of Prohibition to prohibit the Syariah Court from hearing the cases.

Held, the applicant being a follower of the Ahmadhi sect is a non-Muslim and therefore not subject to the jurisdiction of the Syariah Court. A writ of prohibition was therefore issued prohibiting the Chief Kadi from hearing the cases.

APPLICATION.

R. C. Murugeson for the applicant.
Abu Bakar Awang (Legal Adviser, Kedah) for the respondent.

Cur. Adv. Vult.

Mustapha Hussain J. (translation): This is an Application for a Writ of Prohibition against the Respondent under 0.53 R.H.C. 1980.

The Applicant by his affidavit affirmed on March 27, 1983 in supporting his Motion and also by his accompanying Statement, stated that he had publicly declared and embraced the Ahmadhi sect on February 1, 1970. (Ahmadhi sect is also known as the Qadiani sect).

The Applicant was arrested by the officials of the Religious Department on charges of distributing religious pamphlets and documents relating to the Ahmadhi sect. The Applicant was charged at Kubang Pasu Syariah Court, Jitra for offences under s.163(1) and s.163(2) of the Administration of Muslim Law Enactment and his cases were transferred to the Alor Setar Kadi's Court and the hearing was fixed on April 16, 19, and 30, 1983. He is on bail now.

On March 21, 1983 the Applicant filed an *ex-parte* Notice of Motion applying for a Writ of